

OIL INSPECTION DEPARTMENT:
BONDS.

Appropriation Act insufficient to
authorize payment of premium on
official bonds.

November 5, 1935. 11-6



Honorable Roy H. Cherry
State Inspector of Oils
of Missouri
Jefferson City, Missouri

Dear Mr. Cherry:

Acknowledgment is herewith made of your request for
an opinion of this office on the following matter:

"In accordance with our conversation,
I am calling your attention to the
matter of the payment of premiums on
bonds furnished to the State of Missouri
by the deputies and other employees of
this department.

Since the enactment of the Motor Fuel
Tax Law it has been the custom, at
least, for the State to pay these pre-
miums. Recently the State Auditor has
refused payment on the bond of a special
agent of this department by reason of
some opinion of your office. I dislike
very much to require the employees of
this Department to now pay these pre-
miums for the reason that their salaries
have been very materially reduced from
those paid by our predecessors. For
instance, the deputy inspectors have
heretofore been paid a salary of \$2400
per year and now by reason of reduced
appropriation by the General Assembly,
they are paid only \$2000 per year. I
might also add that the motor fuel tax
collections of this department have
been increased by almost half a million
dollars over previous years. The in-
spection fees have likewise been pro-

portionately increased.

An examination of the appropriation made by the recent General Assembly for the support of this department shows that the wording of this bill is almost identical with that of the appropriations made by other sessions of the General Assembly. These bonds have heretofore been paid out of the appropriation for operations. If there is any legal way by which these bonds may be paid out of our appropriation for operations, I believe it should rightfully be done."

Your employees may be divided into two groups, those provided for under the Motor Vehicle Tax Act constituting one group, and those employed under the Oil Inspection Law constituting the other group. These employees are provided for in different acts and separate appropriations are made therefor. We shall accordingly deal with them separately.

I.

**SPECIAL AGENTS AND HEAD
BOOKKEEPER MUST PAY PRE-
MIUMS ON BONDS REQUIRED
BECAUSE APPROPRIATION ACT
INSUFFICIENT TO COVER THAT
ITEM OF EXPENSE.**

Section 7816 R. S. Missouri 1929 provides for the appointment of special agents and a head bookkeeper. This section provides:

"The special agent and the head bookkeeper shall, before entering upon the duties of their respective offices, each execute and file with the inspector a bond, with security to be approved by the inspector, to the State of Missouri in the sum of Ten Thousand Dollars, which bond shall be conditioned upon the faithful performance of the duties of their said respective offices."

By the very terms of this provision the supplying of such a bond is a condition precedent to the entering upon the duties of the office. It is a qualification for the office the same as any other requirement that might be made. As such, the duty rests upon the employee to meet that qualification of office. There is no where to be found in the motor vehicle fuel act any provision for the payment of the premium on the bond by the State. Under such circumstances, the ruling of the court in the case of In Re: Buck's Estate, 220 S. W. 714, is applicable. The Court in that case held that an administrator was required to personally pay the premium on the bond required by law to be supplied, and that it was not a proper charge against the estate he was serving. The Court held, l. c. 716:

"It was the duty of the administrator pendente lite to defray the cost of his bond as such administrator, because it is an expense incident to his qualification as such officer of the court, and not to administer the estate."

The Appropriation Act authorizing the expenditure of moneys from the highway fund is found on pages 106, 107, Laws of Missouri 1935, and reads as follows:

A. PERSONAL SERVICE:

For the salaries of special agents, (who, in addition to their other duties, shall be charged with the duty of investigating throughout the State applications for and payment of motor fuel tax refunds), book-keeper, assistant bookkeepers, refund clerk, checking clerks, audit clerks, file clerk, inspection clerks, license and registration clerks, secretary to inspector, R. R. checking clerk, exemption clerk,
\$72,000.00

B. ADDITIONS:

Operative equipment; consisting of laboratory, scientific and testing equipment, office furniture and equipment,
 500.00

C. REPAIRS AND REPLACEMENTS:

Office furniture and equipment.....\$300.00

D. OPERATION:

General expense consisting of communication, printing and binding, transportation of things, travel within and without the State, other general expense, material and supplies consisting of light, heat, power and water supplies, stationery and office supplies,\$43,850.00

To pay claims for refund of taxes paid on motor vehicle fuels as provided by law,520,000.00"

It appears that the only provision within which premiums on official bonds might fall would be under "operations." The Legislature by its terms has denominated that general expense shall consist of communication, printing and binding, transportation of things, travel within and without the State, and "other general expense." Without question, premiums on bonds do not constitute any of the enumerated classification of things, nor do they fall within the broadest interpretation of those designated thus.

This office in an opinion dated October 5, 1933, to Honorable J. C. Breshears, Commissioner of Agriculture, followed the rule laid down in the case of State ex rel. vs. Dierks, 214 Missouri 578, which held that the terms "other general expense" modified directly the specific enumeration contained in a similar appropriation act and that it could only modify the specific classifications named and amplify those terms so as to include expenses directly connected with the items enumerated. The following quotation is taken from the Dierks case supra, page 591:

"Now take either of the two appropriation ordinances in evidence, for they are both the same in words, except as to the last clause, we have no specific appropriation for this work or for this relator. Relator contends that the words 'other expenses of House of Delegates,' are sufficient to authorize the payment of this money out of the unexpended balance in that fund. The whole clause of the ordinance reads:

'Publishing proceedings, printing,
stationery, office expenses,
furniture, rent of telephone and
other expenses of House of Delegates,
.....\$8,000.00.'

To our mind the rule of ejusdem generis fully applies here. The term 'other expenses' means expenses of the character theretofore mentioned in that clause of the appropriation act and does not include an appropriation for work of the character performed by relator. To hold that it did include such would be to nullify the provisions of section 14, article 5, of the city charter, supra."

We adhere to this opinion heretofore rendered and hold that the term "other general expense" modifies directly the enumerated items, to-wit, "communication, printing and binding, transportation of things, travel within and without the state" and is not sufficient to authorize the expenditure of moneys to pay premiums upon official bonds.

CONCLUSION.

It is therefore our opinion that the State Auditor is not authorized to pay the premiums due on bonds supplied by the special agents and head bookkeeper from the appropriation made by the Fifty-Eighth General Assembly.

II.

CHIEF CLERK AND DEPUTY INSPECTORS MUST PAY PREMIUM ON BONDS BECAUSE APPROPRIATION IS NOT SUFFICIENT TO AUTHORIZE PAYMENT.

The appointment of a chief clerk and of deputy oil inspectors is provided for under the Oil Inspection Laws. Section 13387 R. S. Missouri 1929, provides for the appointment of a chief deputy, a chief clerk and a number of deputy inspectors, and further provides:

"The State Inspector shall require of each deputy and of his chief clerk a bond for the faithful performance of his duties. Said bond to be in the sum of ten thousand dollars, for the benefit and use of the State of Missouri and the said State Inspector, who shall have the approval of said bonds as satisfactory security, and for the breach thereof said state inspector shall have the right of action in his own name for the recovery of any loss he shall have sustained by reason of any default by his said deputy. And the State of Missouri shall also have the right of action on said bonds to recover the loss if any the State may have sustained through the default of the chief clerk or of any such deputy.* * *"

By the foregoing provision the State Inspector is authorized to require official bonds of the Chief Clerk and the deputy oil inspectors. The statutory authority therefore exists authorizing the receiving of these bonds. However, the appropriation act covering the expenses of the Oil Inspection Department payable from general revenue is very similar in its terms to the appropriation act hereinbefore referred to under part one of this opinion. This Act is found at page 106, Laws of Missouri 1935, and reads as follows:

"A. PERSONAL SERVICE:

Salaries of state oil inspector, chief chemist, chief clerk, deputy inspectors, stenographers, chemist helpers and janitors.....\$72,360.00

B. ADDITIONS:

Operative equipment; consisting of laboratory, scientific and testing equipment, office furniture and equipment..... 500.00

C. OPERATION:

General expenses; consisting of communication, printing and binding, travel, other general expense..... 30,000.00
 Material and supplies: consisting of stationery and office supplies,
 1, 050.00"

It will be noted that the terms of this act are, so far as the question here involved, practically identical with Section 41 hereinbefore construed appropriating money for the State Highway Department fund, and it is not necessary here to repeat what has heretofore been said as to the inadequacy of this appropriation to authorize the auditor to pay from public funds the premiums on bonds of the chief clerk and the deputy oil inspectors.

CONCLUSION.

It is therefore the opinion of this office that because of the insufficiency of the provisions of the appropriation act the State Auditor is not authorized to pay premiums on the bonds of the chief clerk and the deputy oil inspectors.

III.

THE STATE OIL INSPECTOR IS
REQUIRED TO PAY PREMIUM ON
OFFICIAL BOND AS APPROPRIATION
ACT IS INSUFFICIENT TO AUTHORIZE
EXPENDITURE OF STATE FUNDS FOR
THAT PURPOSE.

Section 13386 R. S. Missouri 1929, requires the State Inspector of Oils to give a bond in the sum of Twenty Five Thousand Dollars, conditioned upon the faithful performance of his duties, before entering upon the discharge of the duties of his office.

The two appropriation acts hereinbefore considered are the only ones which could possibly be construed as authorizing the payment of the premium for the official bond required by the foregoing section. As these appropriation acts are insufficient to authorize the payment of premiums of employees they are likewise insufficient to authorize the payment of the premium on the bond of the State Inspector.

Honorable Roy H. Cherry

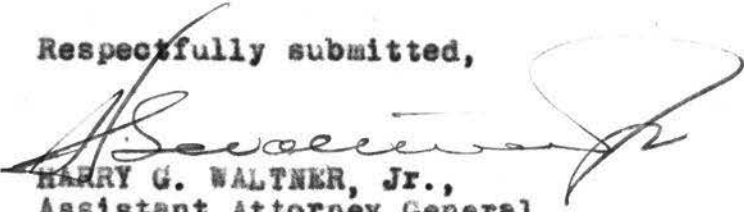
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CONCLUSION.

For the reasons hereinbefore set out, it is the opinion of this office that the appropriation acts appropriating money for the use of the State Oil Department are insufficient to authorize the State Auditor to pay for the premium on the official bond of the State Inspector of Oils.

Respectfully submitted,



HARRY G. WALTNER, Jr.,
Assistant Attorney General

APPROVED:

JOHN W. HOFFMAN, Jr.,
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